Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID K. BROBERG

Appeal No. 2000-0545
Application 08/638,339

ON BRIEF

Before FLEMING, RUGGIERO and BLANKENSHIP ***Administrative Patent Judges***.

FLEMING, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the final rejection of claims 1-29, all the claims pending in the instant application.

The instant invention discloses a device for selectively providing audiovisual signals from one of a plurality of audio/video sources to input receiving circuitry of the device. Appellant's Specification, page 3, lines 22-25. The device includes a memory for storing channel map information for correlating a plurality of channels to the audio/video source corresponding to each channel, a switch for selectively connecting the

selected audio/video source to the input receiving circuitry, and a switch controller for identifying the audio/video source which corresponds to a received channel request and controls the switch to connect the identified source to the input receiving circuitry. Specification, page 3, line 25, to page 4, line 1. Multiple sources having overlapping channel assignments are controlled with user input of a channel. Specification, page 16, lines 3-11.

Independent claim 1 is representative and is reproduced as follows:

1. An apparatus for selecting audiovisual signals from two or more sources of such signals having overlapping channel number assignments and delivering the selected audiovisual signals to an audio/video input, the apparatus comprising, a memory for storing a user built channel map comprising a plurality of user channel identifiers that have each been assigned by the user to correlate to one of the channel numbers of the two or more sources, a switch for selecting one of the sources for connection to the audio/video input, and a controller in communication with the memory for controlling the switch to connect the audio/video input to the source of the channel number correlated to a requested user channel identifier.

In rejecting Appellant's claims, the Examiner relies on the following references:

Klosterman	5,550,576	Aug. 27, 1996
Beery	5,045,947	Sep. 3, 1991

Claims 1-29 stand rejected under 35 U.S.C. § 103 as obvious over Klosterman and Beery.

Rather than repeat the arguments of Appellant and Examiner, we refer the reader to Appellant's Briefs[1] and Examiner's Answer[2] for the respective details thereof.

[1] Appellant filed an Appeal Brief on March 19, 1999 and a Reply Brief on July 20, 1999.
[2] The Examiner, in response to Appellant's Brief, mailed an Examiner's Answer on May 24, 1999.

OPINION

With full consideration being given the subject matter on appeal, the Examiner's rejection and the arguments of Appellant and Examiner, for the reasons stated infra, we will affirm the Examiner's rejection of claims 1-29 rejected under 35 U.S.C. § 103.

On the outset, we note that Appellant states on page 3 of the brief that claims 1 through 29 stand or fall together. We note that Appellant argues all of the claims as a single group in the brief. 37 CFR § 1.192 (c)(7)(July 1, 1998) ***as amended at*** 62 Fed. Reg. 53196 (October 10, 1997), which was controlling at the time of Appellant's filing the brief, states:

> For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

Appellant has provided a statement that the claims stand or fall together in regard to the above groups. We will, thereby, consider Appellant's claims as standing or falling together and we will treat claim 1 as a representative claim of that group.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a ***prima facie*** case of obviousness. ***In re Oetiker***, 977 F.2d 1443, 1445, 24 USPQ 1443, 1444 (Fed. Cir. 1992). ***See also In re Piasecki***, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of

ordinary skill in the art suggests the claimed subject matter. ***In re Fine***, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. ***Oetiker***, 977 F.2d at 1445, 24 USPQ at 1444. ***See also Piasecki***, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and arguments." ***In re Oetiker***, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." ***In re Lee***, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). With these principles in mind, we commence review of the pertinent evidence and arguments of Appellant and Examiner.

Appellant argues that "[n]either Klosterman nor Beery disclose, teach or suggest, the claimed channel number arbitration provided by the 'memory for storing a user built channel map comprising a plurality of user channel identifiers that have each been assigned by the user to correlate to one of the channel numbers of the two or more sources.'" Appeal Brief, page 5, lines 20-23. Appellant further argues that "neither of these references teach or suggest the claimed mechanism for arbitrating among multiple audio/video sources having overlapping channel number assignments." Appeal Brief, page 3, lines 27-30.

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." ***In re Hiniker Co.***, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Moreover, when interpreting a claim, words of the claim are generally given their ordinary and accustomed meaning, unless it appears from the specification or the file history that they were used differently by the inventor. ***Carroll Touch, Inc. v. Electro Mechanical Sys., Inc.***, 15 F.3d 1573, 1577, 27 USPQ2d 1836, 1840 (Fed. Cir. 1993). Although an inventor is indeed free to define the specific terms used to describe his or her invention, this must be done with reasonable clarity, deliberateness, and precision. ***In re Paulsen***, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994). Our reviewing court states in ***In re Zletz***, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) that "claims must be interpreted as broadly as their terms reasonably allow."

We note that Appellant's claim 1 recites a "memory for storing a ***user built channel map*** comprising a plurality of user channel identifiers that have each been ***assigned by the user to correlate to one of the channel numbers*** of the two or more sources . . ." (emphasis added). We must determine the scope of the phrase "user built channel map" as well as the phrase "assigned by the user to correlate to one of the channel numbers."

Addressing the phrase "user built channel map," Appellant's specification states that "[t]he user builds a map in memory that correlates a channel input with a particular source." Specification, page 16, lines 5-7. Default values in the channel map decision list may be overridden by the user via user responses to on-screen menus. Specification,

page 10, lines 1-5. The use of Appellant's claim language, "user built channel map" reasonably allows for the reading of claim 1 language as requiring the user to have selectively chosen a channel map listing a correlation of channel inputs to their corresponding sources.

Addressing the phrase "assigned by the user to correlate to one of the channel numbers," Appellant's specification states that "[t]he user may . . . manually add or delete channels to or from the [channel map decision] list 60, or change the setting . . . for a given channel in the channel map decision list 60." Specification, page 10, lines 22-25. The use of Appellant's claim language, "assigned by the user to correlate to one of the channel numbers" reasonably allows for the reading of claim 1 language as requiring the channel identifiers, as modified or set by the user in the channel map decision list, to correlate to one of the channel numbers in the two or more sources.

We first determine whether Klosterman teaches channel number arbitration provided by a memory for storing a user built channel map comprising a plurality of user channel identifiers that have each been assigned by the user to correlate to one of the channel numbers of two or more sources. Klosterman teaches a grid guide generated from television channel guide information received from multiple sources, and providing a line up of all channels or a selection of channels. Klosterman, column 6, lines 19-29. The user "[has] the ability to delete and activate the channels displayed in grid guide 50, [and] the user can determine whether to have one of the … channels, both of the … channels, or neither of the ..channels." Klosterman, column 6, lines 43-47. The channel grid guide information is stored in memory. Klosterman, column 2, lines 24-26. This

method of merging channel guide information eliminates duplicate channels by allowing only one channel of the duplicate channels to be displayed. Klosterman, column 10, lines 55-60. Therefore, we find that Klosterman teaches channel number arbitration provided by a memory for storing a user built channel map (channel grid guide) comprising a plurality of channel identifiers which the user has determined or assigned to correlate to a channel number in one of the multiple sources.

We next determine whether Klosterman teaches a mechanism for arbitrating among multiple audio/video sources having overlapping channel number assignments. Klosterman states that television channel guide information can be received from numerous sources, including antenna, cable box and satellite sources. Klosterman, column 4, lines 6-8. "When multiple sources are used for receiving television channels, an overlap of channels sometimes occurs." Klosterman, column 6, lines 39-41. Television channel guide information received from the multiple sources are merged to obtain a desired channel grid guide which the user has the ability to delete and activate channels. Klosterman, column 6, lines 43-46. Therefore, we find that Klosterman teaches the mechanism for arbitrating among "two or more sources of [audiovisual] signals having overlapping channel number assignments" as recited in claim 1.

We note that Appellant argues that Klosterman "clearly would fail to be operable if used in connection with multiple audio/video sources having overlapping channel number assignments since two audio/video sources would share the same entered, pre-assigned channel number and no means is provided for discerning exactly which of these two audio/video source the user desired the program be selected from." Appeal Brief,

page 4, lines 21-25. Appellant further argues that "[w]hile Klosterman does address handling overlapping channel program IDs, Klosterman fails to disclose, teach or suggest, handling overlapping channel number assignments." Reply Brief, page 3, lines 8-10.

We find that Klosterman teaches a channel merging method and apparatus which enables the user to delete channels or activate channels on a channel grid guide, arbitrating among multiple sources used for receiving channels when an overlap of a channel occurs. Klosterman, column 6, lines 34-45. The example given by Klosterman in column 6, lines 45-47, of handling overlapping channel program IDs does not preclude overlapping channel numbers. In Klosterman, the word "channel" is defined as being either numerical (for channel numbers) and/or textual (for channel program IDs). Klosterman, column 6, lines 34-39.

We have found above that the mechanism for arbitrating among multiple audio/video sources having overlapping channel assignments as taught by Klosterman is operable to merge channel ***numbers*** from multiple sources. "Channel" is not limited in its definition to only station or program IDs. Rather, the generalized teachings of Klosterman in column 6, lines 34-39 incorporate other examples where ***numerical channels*** may overlap in a grid guide. Appellant's claim language does not preclude Klosterman's user built grid guide for controlling activation and deletion of overlapping channels.

> Appellant has not made any other arguments. 37 CFR § 1.192 (a) states:
>
> > Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. The brief must be accompanied by the fee set forth in § 1.17 (c) and must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

Thus, 37 CFR § 1.192 provides that only the arguments made by Appellant in the brief will be considered and that failure to make an argument constitutes a waiver on that particular point. Support for this rule has been demonstrated by our reviewing court in ***In re Berger***, 279 F.3d 975, 61 USPQ2d 1523 (Fed. Cir. 2002), wherein the Federal Circuit Court stated that because Appellant did not contest the merits of the rejections in his brief to the Federal Circuit court, the issue is waived.

We find that Appellant's claim 1 is properly rejected under 35 U.S.C. § 103. In view of the foregoing, we will sustain the decision of the Examiner rejecting claims 1 through 29 under 35 U.S.C. § 103. Accordingly, the decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

MICHAEL R. FLEMING Administrative Patent Judge	)	
JOSEPH F. RUGGIERO Administrative Patent Judge	)	BOARD OF PATENT
HOWARD BLANKENSHIP Administrative Patent Judge	)	APPEALS AND INTERFERENCES

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